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## Lawyer's Notes

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**In The Matter Of:**

*DPU 96-73/74, 96-75, 96-80/81, 96-83, 96-94  
Bell Atlantic - Arbitrations*

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*Hearing Volume Number 34  
May 15, 1998*

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DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY  
DPU 96-73/74  
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DPU 96-80/81  
DPU 96-83  
DPU 96-94

CONTINUED PUBLIC HEARING held at the Leverett  
Saltonstall Building, 100 Cambridge Street, Boston,  
Massachusetts, on May 15, 1998, commencing at 10:03  
a.m., concerning:

BELL ATLANTIC - ARBITRATIONS

SITTING: Paul Levy, Arbitrator  
Paul Vasington, Commissioner  
Joan Foster Evans, Hearing Officer  
Douglas Denny Brown, Legal Division

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(11) May 15, 1998 10:03 a.m.

(2) PROCEEDINGS

(3) MR. LEVY: Good morning. This is the  
(4) consolidated arbitrations of Bell Atlan-  
tic, Sprint, (5) MCI, AT&T, Brooks Fiber,  
and Teleport. We're (6) continuing with  
our discussion of issues (7) surrounding  
combination of unbundled network (8)  
elements, and today we are to hear  
testimony from (9) AT&T and MCI wit-  
nesses.

(10) Mr. Jones?

(11) MR. JONES: I had just one (12) pre-  
liminary matter, to save a cover letter.  
Hot (13) off the presses in Vermont is a  
proposal for (14) decision regarding the  
legal issues. Federal (15) preemption  
relating to UNE-P, and I would like to (16)  
submit copies of that to the Bench and  
anyone else (17) who —

(18) MR. BEAUSEJOUR: Mr. Jones is of (19)  
course free to submit whatever he likes  
to the (20) Bench. However, the Bench  
has already ruled on the (21) issue.

(22) MR. JONES: With that, we'll call Mr.  
(23) Falcone to the stand. He's anticipated  
that call, (24) and he's arrived.

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(1) MR. LEVY: Mr. Falcone, welcome (2)  
back. Why don't you restate for the  
record your (3) name and your position  
with the company.

(4) THE WITNESS: My name is Robert V.  
(5) Falcone, and I'm a division manager  
with AT&T's (6) local services division.

(7) ROBERT V. FALCONE, Previously Sw-  
orn (8) DIRECT EXAMINATION (9) BY  
MR. JONES:

(10) Q: And Mr. Falcone, you have tes-  
tified here (11) on the UNE-P issue back in  
December; isn't that (12) correct?

(13) A: That is correct.

(14) MR. JONES: Mr. Levy, Mr. Falcone has  
(15) prepared an opening statement,  
which at this point (16) I would ask him to  
deliver.

(17) MR. LEVY: Please do.

(18) A: I guess the theme of my opening  
statement (19) is, for this Commission —  
for you, Mr. Levy, and (20) for this Com-  
mission to make an informed decision  
on (21) the issue facing you, you need to  
have all the (22) facts. Oftentimes, my  
experience is, having a (23) partial story is  
almost as bad, if not worse, than (24)  
having a false story, because you think  
you have

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(1) all the facts, and you really don't.  
(2) We heard from a number of Bell (3)  
Atlantic witnesses a few weeks ago, and I  
think (4) what we heard from those  
witnesses in many cases (5) was a partial  
story — not that it wasn't a (6) truthful  
story, just that it was a partial story. (7)

What I'd like to do is, if I may, refer to  
exactly (8) what they told you and even  
give cites from the (9) transcript, quotes  
that they told you, and kind of (10) fill in  
the blanks, if I may.

(11) The first Bell Atlantic partial (12) story —  
this is from Witness Brown, Transcript  
(13) Page 9, two quotes. The first one, "  
Contrary to (14) the claims of others, the  
UNE platform is simply a (15) substitute  
for resale of BA's retail service." (16) Close  
quote. Second, on the same page, further  
on, (17) the platform, quote, "provides a  
clear case of (18) uneconomic arbitrage."  
Close quote.

(19) The full story: If I understand (20)  
arbitrage, it's when you buy the same  
thing for a (21) different price and you use  
that different price, (22) the variances in  
the price, to get an economic (23) ad-  
vantage. The case that I'm most familiar  
with (24) that's often cited is when one  
buys securities on

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(1) two different exchanges, the same  
security, like (2) IBM, but there's a slight  
variance in price on the (3) Pacific  
Exchange from the New York Exchange,  
and (4) they'll use that slight variance in  
price to buy (5) the same thing for their  
economic gain.

(6) Let's contrast this to what we're (7)  
doing here. We're buying the platform of  
unbundled (8) elements, something that  
is very different than (9) total-services  
resale. We're buying a different (10)  
product. When a CLEC buys the plat-  
form, the CLEC (11) gets to provide a full  
range of services, including (12) ex-  
change access, to its end users and to the  
IXCs. (13) The CLECs get to provide for  
innovative pricing (14) plans, especially  
with respect to features, because (15)  
they get everything at cost-based rates,  
rather (16) than a discount off of the resale  
rate. They get (17) to provide innovation,  
especially through use of (18) AIN cap-  
abilities, which we cannot do with  
resale.

(19) The platform will often cost more. (20)  
One thing that I think came out which  
was incorrect (21) is that the platform,  
because other than the loop (22) element  
and the switch-port element, all the  
other (23) elements are usage-based com-  
ponents, they're billed (24) on a usage  
basis. So they will often cost more

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(1) than resale.  
(2) So, with resale I know that I'm going (3)  
to get the prescribed discount off of the  
retail (4) rate, and I know what my outlay  
is each month. (5) When I buy the  
platform or any other CLEC buys the (6)  
platform, they have no idea what the  
outlay is each (7) month because there's a  
lot of usage-based (8) components, and it

depends on the calling (9) characteristics, both receiving calls and making (10) calls, of their end users.

(11) The next Bell Atlantic partial story, (12) a quote from Witness Brown, Transcript Page 11:

(13) "The company has proposed various alternatives for (14) CLECs to combine individual UNEs through reasonable (15) and cost-effective means." Close quote. First, (16) let me fill in the blanks and give the full story. (17) Let's take the one alternative off the table (18) immediately, and that's the extended-link service. (19) Extended-link service does not allow the (20) combination of loops and switch ports. Witness (21) Stern admitted that in her testimony, that for a (22) CLEC to combine a switch port and a loop, the CLEC (23) must collocate in every central office. With that (24) option off the table, we're left with three other

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(1) options: physical collocation, virtual collocation (2) using the CON-X equipment, and the assembly room.

(3) Each of these options is not an (4) option. They all entail some form of collocation, (5) and with each of these options the CLECs still (6) suffer and the CLECs' customers still suffer all (7) the same harm that I testified to back in December, (8) those being, real quickly, unnecessary service (9) outages, unnecessary degradation of service, (10) unnecessary costs, unnecessary delay to market (11) entry, unnecessary extensive manual processes that (12) Bell Atlantic itself doesn't incur, unnecessary (13) restrictions on the number of customers that can (14) change their local-service provider because of all (15) those manual processes, and the fact that some (16) customers may even be precluded from changing their (17) local-service provider because of the loop (18) technology that they're on — specifically, (19) integrated digital-loop carrier technology.

(20) The next Bell Atlantic partial story, (21) a quote from Witness Brown, Transcript Page 41:

(22) "If the CLEC wants to buy UNEs, they've got to at (23) least participate in that and put the link and port (24) together." Close quote. Also Witness Brown.

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(1) Transcript Page 47, "We do not believe we're being (2) unreasonable in asking carriers to participate in (3) the provision of UNEs by making the connection." (4) Close quote.

(5) This to me highlights Bell Atlantic's (6) real motive here, because the CLECs are not making (7) any connections. If you recall the diagram — and (8) I have it here

with me, and I could hand some out, (9) if you like. The diagram that you used back in (10) December: Bell Atlantic has proposed and said that (11) we could prewire all of our connections on (12) collocated space here. Once we prewire that, we (13) develop the space, put in the prewired connection. (14) What we basically have is this daisy chain of (15) connections or this giant U-turn that starts at the (16) MDF, goes all the way through the frame, makes that (17) turn through the collocated space, back through our (18) space, and back to where it started from.

(19) When we get customers, who makes the (20) connections to connect the customer's loop to that (21) daisy chain of connections? Bell Atlantic's (22) technicians. The CLEC is really combining nothing (23) here. They're just going through the expense to (24) put in all these connections so that Bell Atlantic

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(1) could then manually rip apart the network and (2) connect the customer's line to the tie cable going (3) down to the collocated space and connect the (4) customer's port to the tie cable coming from the (5) collocated space.

(6) MR. JONES: Could I interject, Mr. (7) Levy? The diagram that Mr. Falcone was referring (8) to is part of Exhibit AT&T Combinations 2. I think (9) it was Figure 2 —

(10) THE WITNESS: It is Figure 5.

(11) MR. JONES: — in that exhibit that (12) was previously marked.

(13) MR. LEVY: Thank you.

(14) A: The next Bell Atlantic partial story: (15) The CON-X device that we saw demonstrated is an (16) acceptable alternative for combination of elements (17) when CLECs virtually collocate. And I don't have (18) the specific transcript reference, because there (19) were numerous transcript references. The full (20) story here: The CON-X device adds no value. If we (21) were able to prewire a frame in our secure space, (22) why would we not be able to prewire a frame in (23) unsecure space? Bell Atlantic recognized that they (24) have a problem here with virtual collocation, in

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(1) that some of the problems with physical collocation (2) would be removed, some of those problems being the (3) delay to establish all the physical-collocation (4) arrangements and the cost of establishing those (5) arrangements, if we were able to just prewire these (6) connections in any Bell Atlantic space.

(7) So they had to come up with an (8) alternative, to not allow for this prewiring in a (9) virtual arrangement, and that alternative was to (10) have the delay and the cost of putting this CON-X (11)

equipment in. Because it makes no sense — there (12) is no value to me to have that CON-X equipment (13) should I be living with this collocation (14) arrangement if I were able to simply prewire the (15) stuff in the central office.

(16) CON-X equipment, at Transcript Page (17) 63: The CON-X fellow, I believe his name was (18) Kennedy, the witness, represented the CON-X device (19) as new technology. I've been in this business (20) since 1970. Electromechanical technology was (21) removed from AT&T's network, and I would venture to (22) guess from all of Bell Atlantic's network, at least (23) ten years ago. Electromechanical switching, (24) electromechanical devices, were the core of the

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(1) network when I started in 1970. I don't know of an (2) electromechanical switch in any of — there (3) certainly is none in AT&T's network. I would (4) venture to say there's none in Bell Atlantic's (5) network. This is not new technology. It is a step (6) backwards in technology time. Electromechanical (7) devices are dinosaurs.

(8) Finally, if the CON-X device is as (9) efficient as Bell Atlantic represents, then I think (10) a solution that would put the CLECs at parity with (11) Bell Atlantic is: Why would Bell Atlantic not wish (12) to replace their MDFs with this device, and then we (13) could all have equal access to the device and there (14) would be no manual work required by any Bell (15) Atlantic technicians or any AT&T technicians?

(16) So I would think if the device is (17) that good — which it's not, and I'm not proposing (18) Bell Atlantic do that, because the device is old (19) technology. It may have some utility in some (20) remote locations where they're not staffed with (21) one of these devices, but not for what Bell (22) Atlantic is proposing it for.

(23) The next Bell Atlantic partial (24) story. Recent change is not a viable alternative

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(1) for developing — the recent change is not a viable (2) alternative for combining the elements, is the (3) general theme of these quotes. A quote from (4) Mr. Albert at Transcript Page 21: "It is not (5) combining the loops through a switch port." (6) Another quote from Mr. Albert at Transcript 170:

(7) "You cannot use the capability of the switch to (8) unbundle anything. That capability does not (9) disconnect the loop from the switch port." Another (10) Mr. Albert quote, Page 25: "Given enough time and (11) enough money, I suppose it





Mr. Albert.

[20] Mr. Levy, this was in answer to a [21] question that you asked, on why couldn't they have [22] prewired blocks, instead of being in collocated [23] space, be right on the MDF? And that was Mr. [24] Albert's answer. The fact of the matter is,

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[1] there's going to be an equal number — I agree with [2] Mr. Albert, there will be more blocks on the [3] frame. But there are going to be more blocks on [4] the frame whether they're prewired or they're not [5] prewired, and there are going to be the same amount [6] of blocks on the frame whether they're prewired or [7] not prewired.

[8] If I think I'm going to get 5,000 [9] customers in a central office and I need this daisy [10] chain of connections to get my 5,000 customers, I [11] have to have enough blocks on this frame to support [12] 5,000 lines going into my collocated space and [13] 5,000 lines coming out of my collocated space. [14] What difference if those blocks are not prewired or [15] they're prewired, strapped together here or not [16] strapped together? It's going to take up the same [17] amount of space on the frame.

[18] The last Bell Atlantic partial [19] story: Service quality is not affected because of [20] these extra connections. And the quote from Mr. [21] Albert is on Transcript Page 29 — not a quote; I'm [22] just going to paraphrase. Mr. Albert said that a [23] call from Boston to San Francisco goes through as [24] many as 70 to 100 connections.

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[1] First off, if Mr. Albert really [2] believes that, I think we're doing him injustice [3] keeping him out of long-distance business. But [4] secondly, this is another case of apples to [5] oranges. A call from San Francisco to Boston truly [6] goes through a number of connections, may go [7] through a couple of switches to find its way here. [8] However, those connections are made electronically [9] by digital switches with preestablished [10] connections, no human intervention. The days of [11] having Mabel on the cord board saying, "Hold on, [12] Mr. Levy. Let me make your connection to Boston," [13] and plugging in are gone. This is all done [14] electronically, in contrast to the manual [15] connections we're talking about, of connecting all [16] these wires on the frame, which require human [17] beings for every loop. There's truly no comparison [18] here.

[19] Let me close up here. There are many [20] other partial stories that Bell Atlantic told [21] during that session two weeks ago. I tried to pick [22] these just to highlight Bell Atlantic's true [23] motive.

Their true motive here is, they don't want [24] to see the CLECs use the platform to compete with

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[1] them. CLECs have made it clear. The only way [2] you're going to get widespread competition [3] throughout this state or any state is through use [4] of the unbundled-network-element platform. Bell [5] Atlantic recognizes that, and they're going to [6] great pains to block us from doing that.

[7] The fact is, if Bell Atlantic truly [8] just wants to engage in spite work here, because [9] they claim it is their legal right to do so, it [10] shows their motive of they really don't want [11] competition, they're not serious about having [12] competition here. All they want to do is maintain [13] their local monopoly and get into the long-distance [14] business.

[15] If CLECs had to find themselves in a [16] mode of combining, AT&T's approach to Bell Atlantic [17] as late as, it was the Tuesday before Thanksgiving, [18] because I was involved in the meeting, asking Bell [19] Atlantic that, "We have better ways of doing this. [20] We understand what the Eighth Circuit Court did. [21] We understand your position. We think it stinks. [22] We have a better way. We'd like to talk to you." [23] And Bell Atlantic has refused to talk to us about [24] the recent-change capability. To this day, they

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[1] still have not sat at the negotiation table to [2] discuss it with us. Their policy is, collocate or [3] no-go — and right now it's no-go.

[4] Again, if they're truly interested in [5] opening up their local-market competition, they [6] should demonstrate this by their actions and either [7] not engage in the spite work of ripping things [8] apart and taking customers out of service, simply [9] because they think the Eighth Circuit Court allows [10] them to do that, or if we find ourselves in that [11] position, to work with the CLECs to find a more [12] reasonable way of combining the elements other than [13] their proposals.

[14] Thank you for your patience.

[15] MR. JONES: I have a couple of [16] additional questions for Mr. Falcone, if that would [17] be okay.

[18] MR. LEVY: Of course.

[19] MR. JONES: Mr. Levy, do you have [20] available to you the exhibits?

[21] MR. LEVY: I don't have that one with [22] me.

[23] MR. JONES: I'll provide a copy to [24] the Bench.

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[1] Q: Mr. Falcone, just a couple of questions, [2] to be sure our record is as clear as it can be. Do [3] you have in front of you the diagram that you [4] referred to in your presentation, which is a part [5] of what had previously been marked as AT&T [6] Combinations 2? Specifically, I'm interested in [7] Figure 1 and Figure 5.

[8] A: Yes, I've got them.

[9] Q: Am I correct that the diagram that you [10] referred to in your presentation was Figure 5 of [11] that exhibit?

[12] A: That's the diagram that represents what [13] the condition of the CLECs will be based on Bell [14] Atlantic's proposals.

[15] Q: Just so we're clear, that's the one you [16] were referring to during the course of your [17] presentation?

[18] A: Yes, that's correct.

[19] Q: This shows the interconnections, [20] cross-connections that are required to achieve [21] physical collocation in a central office, where the [22] physical collocation will be required to pass [23] through intermediate distribution frames, in [24] addition to connecting the main distribution frame

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[1] and the collocation space. Is that accurate?

[2] A: That is accurate. It would also [3] represent, if I may, if you could just use your [4] imagination, Bell Atlantic's assembly-room [5] arrangement, except that this would not be [6] physically collocated space, it would just be the [7] assembly-room frame. It also represents the [8] virtual-collocation arrangement. In lieu of the [9] collocation space with that prewired connection in [10] there, you'd have that CON-X robot device in [11] there. But the same daisy chain of connections are [12] involved whichever three flavors you choose.

[13] Q: Would you go back to Figure 1 of that [14] exhibit?

[15] A: Yes, sir.

[16] Q: And just tell us what Figure 1 [17] represents.

[18] A: Figure 1 represents the majority of how [19] Bell Atlantic's loops are connected to Bell [20] Atlantic switchboards. There are cases, to make [21] the record complete, where Bell Atlantic may run [22] some of these loops in large central offices [23] through an IDF. I don't have that figure with me, [24] but just to make the record clear. But that is

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[1] more the exception than the rule. This is the rule [2] of how Bell Atlantic's loops are connected to Bell [3] Atlantic's switch ports.

[4] Q: Because it is part of the exhibit, and I [5] would like this to be clear, let me show you Figure [6] 2 of the exhibit. Does that show the existing [7] configuration with IDF interconnections, [8] intermediate connections?

[9] A: That is the one I was referring to that I [10] didn't bring with me.

[11] Q: Looking at Figure 1 of Exhibit AT&T [12] Combinations 2, what additional equipment, if any, [13] would be required to be inserted in this diagram [14] under the UNE-platform approach?

[15] A: None whatsoever.

[16] Q: What additional equipment would be [17] required to be inserted in this picture under the [18] recent-change approach?

[19] A: None whatsoever.

[20] Q: Does the recent-change functionality that [21] currently is employed by Bell Atlantic for its own [22] purposes permit the complete disconnection of any [23] switch functionality from a particular link?

[24] A: Yes. If I could clarify, to make sure

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[1] we're all together.

[2] Q: Yes.

[3] A: Yes, if I could perform recent change — [4] Bell Atlantic today, who has unrestricted recent [5] change, could go up on any link and remove the [6] functionality of the switch from that link.

[7] Q: Can it remove all of the functionality [8] from that link?

[9] A: They could do it one of two ways. They [10] could remove all of the functionality from the [11] link, where there would be no dial tone and there [12] would be no incoming calls allowed to the former [13] phone number, or they could do it in a manner that [14] allows for what's known as soft dial tone or warm [15] dial tone, that allows customers to make limited [16] outgoing calls — and generally the limit is 911 [17] and to the service bureau, the Bell Atlantic [18] service bureau.

[19] Q: You anticipated my next question: Soft [20] or warm dial tone is also sometimes referred to as [21] left-in dial tone; is that correct?

[22] A: That's correct. And again, left-in dial [23] tone removes all the functionality of the loop, [24] with the exception of allowing the customer one or

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[1] two types of phone calls.

[2] Q: And Bell Atlantic employs the recent- [3] change methodology to dictate whether a particular [4] loop is left with either no dial-tone functionality [5] what-

soever or soft dial-tone functionality? Is [6] that how they do it?

[7] A: That's how they do it. And generally, in [8] Bell Atlantic's practice today, as is the case with [9] every incumbent LEC's practice, the policy is [10] wherever possible not to rip out any physical [11] connections if a customer disconnects service. The [12] idea is, when some customer moves from their home [13] or apartment, somebody is going to come in behind [14] that customer and move into that home or apartment [15] and want service. So Bell Atlantic removes the [16] former customer's service via the recent-change [17] process and installs the new customer's service via [18] the recent-change process.

[19] Q: And if we inject a CLEC into that [20] scenario, so that the customer wants to convert [21] service from Bell Atlantic to a CLEC, with access [22] to the recent-change functionality, is it the case [23] that Bell Atlantic could turn off that [24] customer's — turn off the switch functionality on

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[1] that customer's loop, and a CLEC, if it had access [2] to the recent-change functionality, could turn that [3] functionality back on?

[4] A: That's exactly right.

[5] Q: And that could all be done by software, [6] without any physical intervention other than the [7] person operating the computer software?

[8] A: Well, actually, if it's developed properly, [9] with the proper flows through as Bell Atlantic has [10] for themselves, there wouldn't even be somebody [11] operating the computer software; it would all be [12] triggered by the provisioning process. So once the [13] agent took the order from the CLEC — the CLEC [14] agent took the order and sent the order over to [15] Bell Atlantic, the rest of it should just flow [16] through, with no human intervention at all.

[17] Q: And just so we're clear in one place: In [18] your opinion, is that option superior to any of the [19] physical- or virtual-collocation options that Bell [20] Atlantic has advocated?

[21] A: Vastly superior. As I've testified [22] before, that option eliminates the delay involved [23] with collocation. It eliminates the cost of [24] collocation. It eliminates all the manual

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[1] intervention, all the additional manual connections [2] that need to be made, all the human error that [3] would go along with that, the additional loop [4] lengths that are involved. You heard it all, on [5] and on.

[6] Q: Thank you, Mr. Falcone.

[7] MR. JONES: I have no further [8] questions.

[9] MR. LEVY: Thank you. Mr. Beausejour [10] or Mr. Werlin, would you like a few minutes?

[11] MR. BEAUSEJOUR: I'd appreciate [12] that. Thank you.

[13] MR. LEVY: Let's take a ten-minute [14] break.

[15] (Recess taken.)

[16] MR. LEVY: Let's go back on the [17] record. Mr. Beausejour?

[18] MR. BEAUSEJOUR: Mr. Levy, I have a [19] couple of questions for Mr. Falcone. But also we [20] have our witnesses, Ms. Stern and Mr. Albert, [21] available today. I thought that after Mr. Falcone [22] is finished and Ms. Guariglia is finished, that [23] they could provide whatever additional comments [24] they have concerning both of the witnesses'

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[1] testimony.

[2] MR. LEVY: I think that would be a [3] good idea. I'm trying to figure out what's [4] rebuttal and what's direct here. I think Mr. [5] Falcone and Ms. Guariglia are still offering [6] direct. So your testimony at that point becomes [7] rebuttal. I think they at that point are entitled [8] to surrebuttal, and then you at that point are [9] entitled to rejoinder.

[10] MR. BEAUSEJOUR: We'll make a lawyer [11] of you yet, Mr. Levy.

[12] MR. LEVY: I hope not.

[13] MR. SALINGER: I fear we have.

[14] MR. LEVY: A little scary; combining [15] economics and law, as you know, is a dangerous [16] thing.

[17] Go ahead with your questions.

[18] MR. BEAUSEJOUR: Thank you.

[19] CROSS-EXAMINATION

[20] BY MR. BEAUSEJOUR:

[21] Q: Good morning, Mr. Falcone.

[22] A: Good morning.

[23] Q: Mr. Falcone, you indicated that it was [24] important that the Department have facts in order

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[1] to make an informed decision; correct?

[2] A: Absolutely.

[3] Q: What decision do you think the Department [4] is making at this stage of the proceeding? In [5] other words, what's the issue before the [6] Department?

[7] A: Are you trying to make a lawyer out of a [8] technician?

[9] MR. JONES: Let me object. Mr. [10]

Falcone can give his understanding of what the (11) issue is, and it's not a lawyer's opinion.

(12) MR. LEVY: Fine. We'd welcome your (13) opinion.

(14) A: My opinion is that we had a hearing back (15) in December on how network elements would be (16) combined. At that time Ms. Stern provided Bell (17) Atlantic's position. I presented AT&T's position. (18) My understanding is, the Commission came out and (19) said, "Go negotiate. We don't believe Bell (20) Atlantic's way of doing things is the right way. (21) Go negotiate something." AT&T tried to negotiate (22) something with Bell Atlantic. Bell Atlantic came (23) back with its collocation or nothing. And we're (24) here today to find out what something may be other

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(1) than collocation.

(2) Q: And that's for the purpose of providing (3) access to the individual network elements, so that (4) AT&T or another CLEC can combine them; is that (5) correct?

(6) A: That's for the purpose of how network (7) elements will be combined.

(8) Q: By AT&T or a CLEC; correct?

(9) A: Either that, or should the Commission (10) decide that they have the authority under state law (11) to order you to keep things combined that are (12) already combined.

(13) Q: And your RCMAC testimony, that's your (14) view of how AT&T should be permitted to combine the (15) individual link and port UNEs?

(16) A: If the CLECs find themselves in a (17) position where this Commission, or even the Supreme (18) Court, if it gets that far, decides that the Eighth (19) Circuit Court ruling will stand and CLECs have to (20) combine elements for themselves, then my testimony (21) is certainly recent change is a much more efficient (22) way to do that from a CLEC's standpoint, from a (23) customer's standpoint, and frankly from a Bell (24) Atlantic standpoint.

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(1) Q: With respect to the RCMAC, you mentioned (2) that you had discussions with a CommTech (3) representative.

(4) A: That's correct.

(5) Q: Who was that representative?

(6) A: Actually, there were two CommTech (7) employees. One gentleman's name is Frank Loria. (8) Could I follow up with the name of the second? I (9) can't recall it off the top of my head.

(10) MR. LEVY: We'll take that as Record (11) Request Combinations 15.

(12) (RECORD REQUEST.)

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(13) Q: When did that discussion take place?

(14) A: If you need exact dates, I would have to (15) do that as a record request, also.

(16) Q: Just a time frame.

(17) A: A time frame would have been around (18) December we started those discussions. The formal (19) discussions, the last one was probably in March. I (20) most recently spoke to the CommTech representatives (21) on the phone last week.

(22) Q: Do you have any documentation that you (23) provided to CommTech regarding the recent change (24) system?

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(1) A: Other than public things like the Eighth (2) Circuit Court ruling, and just getting them up to (3) speed on kind of the history, no. Most of this was (4) done very informally, in a conference room, drawing (5) pictures on the wall, explaining our proposal and (6) getting their input as to how either existing (7) systems may be modified or a new system may be (8) deployed to accomplish the task.

(9) Q: Has CommTech provided you with any (10) written documentation regarding their conclusions?

(11) A: No, they haven't.

(12) Q: Are you aware of the fact that the (13) MACSTAR system is only one of the systems that Bell (14) Atlantic uses in Massachusetts for recent change?

(15) A: Yes, based on Mr. Albert's testimony, (16) MACSTAR is one of two. The other one was a (17) Bellcore product. I believe the acronym is CCRS — (18) looking to Mr. Albert nodding.

(19) MR. ALBERT: That's it.

(20) A: And based on our discussions with (21) CommTech, their product, MACSTAR, or a sister (22) product called FastFlow, has the capability of (23) interfacing with every switch technology Bell (24) Atlantic has deployed in the Massachusetts

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(1) network. So it's not an issue of not being able to (2) work with the switch technology.

(3) We've had cursory discussions with (4) Bellcore, but Bellcore was not going to go into any (5) great detail with us, other than to say that they (6) believe they can work with us to do similar (7) modifications to their system. But Bellcore was (8) looking for consulting fees. So before we got in (9) depth in those discussions, we didn't really go any (10) further with Bellcore.

(11) Q: I don't think we've defined it anywhere (12) on the record. What is an

unbundled link? Give us (13) your definition.

(14) A: Unbundled, in the history, kind of a term (15) of art in the telecommunications industry, in my (16) mind, and I think in the industry's mind until the (17) Eighth Circuit Court came along, was something that (18) could be purchased separately from another item. (19) Let me give an example, a better way to describe (20) this.

(21) Back in the — I'm going to get the (22) time frame wrong; I don't think it's important — (23) late '70s, early '80s, the FCC came out with a (24) ruling that said that customer-premises equipment

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(1) should be unbundled from the network, meaning that (2) you could provide your own telephones in your (3) house. When that ruling came along, at the time (4) there was no Bell Atlantic. At the time AT&T, New (5) Jersey Bell, Massachusetts Bell, didn't roll trucks (6) to people's houses to physically rip the phone out (7) and say, "Here's your unbundled phone, Mr. Jones. (8) Now figure out how to reconnect it." What they did (9) was, they unbundled the pricing of the phone from (10) the pricing of local service. So that I then as a (11) consumer had the choice of purchasing my phone from (12) Bell Atlantic on a lease month by month or saying (13) to Bell Atlantic, "Hey, I don't want to buy your (14) phone. Here it is. Take it back. I'm going to go (15) to Sears and buy somebody else's phone and plug it (16) in."

(17) That, to me, is unbundling. That has (18) always been the definition of unbundling. I (19) believe that's what the Act and the FCC meant by (20) unbundling, meaning that the network components are (21) priced separately and I have the ability to (22) purchase them as I want, either buy them (23) individually as a loop or I can buy the loop and (24) the switch port. It doesn't mean physically

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(1) ripping things apart.

(2) Q: Well, doesn't an unbundled link refer to (3) a physical facility that has an originating and a (4) terminating point?

(5) A: An unbundled link is the functionality of (6) a physical facility, just as, going back to my (7) example, the unbundled customer-premises equipment (8) is a physical thing: the telephone and the wires (9) inside the house.

(10) Q: But a link — when AT&T orders an analog (11) link from Bell Atlantic, it expects it to have one (12) terminating point, perhaps at a customer's (13) premises, and another terminating point at a (14) central office; correct?

(15) A: In that example, in some cases

we're (16) buying a thing, like a link. When I buy unbundled (17) switching or unbundled signaling or unbundled (18) shared-transport, I'm not buying a thing. I'm (19) buying a functionality.

(20) Q: I'm just talking about an unbundled (21) link.

(22) A: But you started the question with (23) unbundling, and there are a lot of things that are (24) unbundled.

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(1) Q: I'm talking now just about a link.

(2) A: When I buy an unbundled link there is an (3) end point, one at the central office and the other (4) end point is the customer premises.

(5) Q: Where in the central office does an (6) unbundled link terminate?

(7) A: I guess I would answer that: Depending (8) on the technology of that link, if it were an (9) analog link, it terminates on the main distribution (10) frame. If it were an integrated digital-loop (11) carrier link, the first next place that link has an (12) appearance is in the switch.

(13) Q: You were prefacing an earlier comment by (14) saying "by definition of the FCC." I assume you (15) were going to say, "An unbundled link is (16) something." What's your understanding —

(17) A: I believe the FCC defined the unbundled (18) link, an analog unbundled link, as terminating on (19) the MDF. But again, there are digital-loop-carrier (20) links that don't have an appearance in the central (21) office, that the next place you could find that (22) customer's line is in the switch.

(23) Q: If AT&T is ordering purely an unbundled (24) port, what is your understanding of what AT&T will

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(1) order in that instance?

(2) A: May I ask a clarifying question?

(3) Q: Yes.

(4) A: I have my own loop in this case, and I (5) want to plug it into a Bell Atlantic port?

(6) Q: Correct.

(7) A: In that case I am purchasing the (8) unbundled switch from Bell Atlantic.

(9) Q: Where does AT&T under the FCC's rules (10) gain access to that unbundled switch?

(11) A: I believe the FCC definition of the (12) unbundled switch includes all the features, (13) functionalities, and capabilities. Switch, (14) including the line port, the trunk ports, and all (15) the switch software.

(16) Q: If AT&T were to provide its own loop (17) facility, where would AT&T obtain access to the (18) Bell Atlantic

unbundled switch port?

(19) A: Physically?

(20) Q: Yes.

(21) A: We would have established collocated (22) space. I don't know if we'd ever run into this — (23) but we'd have established collocated space, (24) probably. We would deliver to that collocated

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(1) space. Then the loop would go up to your main (2) distribution frame, and we would access a port on (3) your main distribution frame, if we were buying an (4) analog port.

(5) Q: If we were just talking now about (6) unbundled switch ports, access to unbundled switch (7) ports would be as — you'd expect to obtain access (8) in the manner you just described?

(9) A: I never gave this a lot of thought. But (10) yes, off the top of my head, that's the way I would (11) see it, yes.

(12) Q: Could you think of any other means by (13) which you could gain access to an unbundled switch (14) port, other than as you've just described?

(15) A: If I were buying a DS1 port, I would (16) bring a DS1 facility — for example, a customer (17) that had a PBX may have not analog loops but a DS1 (18) facility. And if I didn't have my own switch, I (19) wanted to use yours, I would bring a DS1 facility (20) through your central office, connect that through (21) your digital cross-connection frame, and get a DS1 (22) switch port.

(23) Q: You also testified, I believe, that the (24) only way to get widespread competition in

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(1) Massachusetts is through the platform; is that (2) correct?

(3) A: That is certainly AT&T's position. I (4) believe that's the position of many of my fellow (5) CLECs. And I think the marketplace is bearing that (6) out. There is facilities-based competition today, (7) but it is truly a niche competition for the (8) downtown-business market. No LEC, no CLEC, nobody (9) has enough money and enough time to duplicate the (10) Bell Atlantic facilities to serve the customers in (11) the suburbs and the rural areas and the small (12) businesses. The only way we could get off the (13) ground to do that is through the purchase of the (14) unbundled components of the incumbent's network, (15) and then, as the CLEC's market share grew, replace (16) those components with their own.

(17) Q: Has AT&T prepared — have you seen any (18) analysis prepared by AT&T which considers the (19) economics of entering the Massachusetts market (20)

through the UNE platform?

(21) A: I have personally not seen that, no.

(22) Q: Are you aware of any analysis that exists (23) at AT&T that considers the analysis of entering the (24) Massachusetts market through the UNE platform?

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(1) A: I suspect or am quite sure that analysis (2) has been done. I think — and I'm going by memory (3) here. I believe there is an issue in this state (4) with the price of the unbundled elements that we're (5) also concerned with, that going into the market (6) entails three things really: the ability to have (7) access to the unbundled elements at a reasonable (8) price, both recurring and nonrecurring, and to have (9) the operations-support system in place to allow us (10) to order them and have flow-through. So it's (11) really a three-tier thing. We're here today to (12) talk about one of those three tiers, the ability to (13) combine the network elements, which we don't really (14) have today, based on Bell Atlantic's policy.

(15) Q: I'd make a record request for any (16) analysis that AT&T has about the economics of (17) entering the Massachusetts market through the UNE (18) platform.

(19) MR. JONES: I would object to that (20) record request, Mr. Levy. It obviously would (21) request — I don't know the status of the existence (22) or availability of such analyses. But it would (23) obviously request confidential business-planning (24) documents from AT&T, which I would suggest are of

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(1) limited, if not no, relevance to the immediate (2) issue that's before the Department for purposes of (3) completing this arbitration process and completing (4) an interconnection agreement between AT&T and Bell (5) Atlantic.

(6) MR. LEVY: Let me respond in this (7) way: If AT&T or one of the other CLECs is as part (8) of their argument in this case making the case that (9) certain types of entry are not economical or are (10) economical and using that as a justification for a (11) certain conclusion that you would like the (12) Commission to reach, in the absence of some kind of (13) quantitative or substantive information supporting (14) that assertion, the assertion is basically just (15) that: it's an unsupported assertion and would not (16) carry very much weight. Now, there may be other (17) arguments that AT&T and the other CLECs might wish (18) to make on this point.

(19) So I guess I throw it back to you and (20) say: in light of what I've just said, in my (21) opinion based on what I've heard



here, if you want (22) to make as part of your case that kind of economic (23) or business argument, if you want to make it in an (24) unsupported way, it won't carry much weight, at

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(1) least in my opinion today, which would leave you (2) with perhaps other arguments that you might wish to (3) make.

(4) MR. BEAUSEJOUR: Mr. Levy, Mr. (5) Falcone testified — we could have the stenographer (6) look through the testimony, but this is a pretty (7) fair paraphrase — that the only way to get (8) widespread competition in Massachusetts is through (9) the platform.

(10) MR. LEVY: And that's really what I'm (11) responding to. To the extent that AT&T and MCI and (12) the other carriers wish to make that argument and (13) have it be perceived by the Department as a (14) substantive argument as opposed to, frankly, just a (15) statement without support, I think the kind of (16) information Mr. Beausejour is asking for is (17) relevant.

(18) I frankly would leave it to you to (19) decide which way you want it. In my view, it's got (20) to be one way or the other.

(21) MR. JONES: Let me suggest: Could we (22) record this as a record request? It's a little (23) bit, in my mind, silly to argue in the abstract, at (24) least I feel a little bit silly arguing in the

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(1) abstract. Let me find out what the facts are, and (2) then we will respond and take into account in (3) responding to what you've just said, to which we (4) will give weight.

(5) MR. BEAUSEJOUR: Of course it would (6) be provided under protective agreement.

(7) MR. LEVY: Of course.

(8) MR. MANDL: Just an additional (9) observation, since you mentioned MCI as well: I (10) think what Mr. Falcone testified to was that the (11) UNE-P platform does not involve many of the costs (12) which Bell Atlantic would impose through (13) collocation and multiple cross-connection (14) activity. There is plenty of evidence in the (15) record about what those costs are, and those costs (16) are avoided under the approach that he's (17) recommended. Irrespective of what the UNE-P (18) platform costs are, there's an immense level of (19) costs that are avoided.

(20) MR. LEVY: I take that as a truism, (21) that additional costs are in fact additional (22) costs. But that really wasn't the heart of what (23) this record request got to.

This record request (24) got to Mr. Falcone's assertion as to the level of

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(1) competition that would likely occur under different (2) scenarios. That's really what my comments were (3) addressed to.

(4) I understand that there are different (5) levels of costs involved in providing service to (6) CLECs using different arrangements. It's the (7) impact of that which was the thrust, I think, of (8) Mr. Falcone's remark.

(9) So, Mr. Jones, we'll wait to hear (10) back to you on that record request.

(11) (RECORD REQUEST.)

(12) Q: Mr. Falcone, have you examined the Bell (13) Atlantic position statement that was filed on April (14) 17th?

(15) A: I need to ask a clarifying question.

(16) Q: Certainly. I'm getting more questions (17) from you than I think I've gotten from any witness (18) lately.

(19) MR. LEVY: And they're very good (20) questions, too.

(21) (Laughter.)

(22) A: Was the position statement the document (23) that explained each of the scenarios under which (24) CLECs could combine the elements?

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(1) Q: Yes.

(2) A: I did read that prior to coming to the (3) May 1st hearing. I haven't read it since then. (4) So, yes.

(5) Q: Have you seen any analysis that analyzes (6) the costs AT&T might incur if it were to obtain (7) unbundled link and port UNEs in Massachusetts (8) through the proposals that Bell Atlantic is (9) making?

(10) A: I could tell you that I've seen analysis (11) that was done on the physical collocation (12) arrangement in other states, and the costs were (13) astronomical — New Jersey, Maryland, (14) Pennsylvania. What I can tell you is, in this (15) state, whether it's through physical collocation, (16) whether it's through the assembly room, or whether (17) it's through CON-X, regardless of what the costs (18) are, they're all unnecessary costs. As a matter of (19) fact, I don't mind saying it here on the record: (20) In a session we had in New Jersey, that the New (21) Jersey board brought MCI, AT&T, and Bell Atlantic (22) together to try to negotiate something. I on the (23) record in New Jersey said, even if Bell Atlantic (24) were giving collocation away for free, we would not

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(1) use it, because cost is only one aspect

of why this (2) doesn't work. The real problem with your method is (3) all the manual work, all the gating of the (4) cutovers, and all the harm to the customer that (5) AT&T and its brand name doesn't want to impose upon (6) its customers.

(7) Q: So the answer to my question is, you have (8) not seen any such analysis.

(9) A: No, I have not. Sorry for the long- (10) winded answer.

(11) Q: Yes, that was nonresponsive, but that's (12) beside the point.

(13) MR. JONES: We'll let Mr. Levy (14) declare what's responsive and what isn't.

(15) MR. LEVY: Thank you.

(16) MR. BEAUSEJOUR: Mr. Levy, I have no (17) further questions.

(18) MR. LEVY: Thank you.

(19) EXAMINATION

(20) BY MR. LEVY:

(21) Q: I have one or two, Mr. Falcone. I'd like (22) to explore a little bit the distinction you make (23) between using the UNE platform and resale. This (24) goes way back, to the beginning of these

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(1) proceedings, where the CLECs were very intent on (2) ensuring that the resale discount would be larger (3) rather than smaller, if I can put it that way.

(4) The clear sense I got at the time was (5) that they cared about that because they wanted to (6) use resale as a way of entering the Massachusetts (7) market.

(8) A: Yes.

(9) Q: Are you suggesting now that your company (10) does not view resale as a way of entering the (11) Massachusetts market?

(12) A: Without a doubt. I think it's even well- (13) documented by both AT&T's chairman, Mr. Armstrong, (14) and our chief operating officer, Mr. Ziegler, that (15) AT&T will not use resale to enter any markets, and (16) suspended resale in any markets that we were in, (17) because it was just not working. We were losing (18) too much money on every single customer we had. If (19) I may, I guess way back when, the strategy AT&T had (20) was resale was a stopgap to get into the market (21) quickly. We thought it would be an easy way to (22) start building up a customer base, with a migration (23) to the platform or facilities-based or a (24) combination of both. The platform is not something

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(1) that's on the horizon, based on all the roadblocks (2) being put up in front of it. Resale inflicts too (3) much pain financially. So AT&T's position is that (4) we



were not going to come into the local market (5) with resale.

(6) Q: I'm trying to square what you just said (7) about resale imposing too much financial pain with (8) your earlier statement today, that the UNE platform (9) can actually be more expensive than resale.

(10) A: Sure, and I can answer that easily. (11) Let's contrast it. Let me do resale first.

(12) Resale is nothing more than the CLEC (13) becoming a marketing agent for all of Bell (14) Atlantic's high-income products. Why do I say (15) that? With resale, all the CLEC gets to do is at a (16) discount resell Bell Atlantic's local service. The (17) CLEC does not get the revenue opportunity that Bell (18) Atlantic has for access services, which is a (19) high-margin revenue opportunity. They don't get (20) the high-margin revenue opportunity that they get (21) for features, that they do with a platform.

(22) Q: "Features" meaning?

(23) A: The vertical features of the switch. All (24) we get is the feature at the prescribed discount.

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(1) It's important to know that the (2) features at the switch are pure profit for any (3) CLEC. I don't have any features on my home phone (4) because I know that in New Jersey Bell Atlantic (5) charges like \$4 a month for call-waiting and it (6) costs Bell Atlantic probably 2 cents to provide (7) that to me. That galls me — besides the fact that (8) I obviously didn't want the first call that came (9) in, never mind getting the second call.

(10) So, until there's competition and the (11) feature prices come down to something reasonable, (12) those things are pure profit. In resale, we just (13) get the discount off of local service. They get (14) all the access revenues. They still get all the (15) high margins on the features. They still get the (16) subscriber line charge. And we become the (17) marketing agent for their products.

(18) If I were Bell Atlantic, I would want (19) to resell every single one of my customers to a (20) CLEC, because I lose all my customer-care (21) headaches, I lose all my billing headaches, I lose (22) all my uncollectible headaches, and yet I make all (23) the high margin on the things that are profitable (24) for me: features, subscriber-line charge, and

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(1) access. When I buy the unbundled elements, I now (2) buy a virtual network —

(3) Q: Before you go to unbundled elements —

(4) A: Sure.

(5) Q: I understand your point that Bell (6) Atlantic makes a profit on resale. As I

recall our (7) costing methodology with regard to resale, that was (8) intended, that result was intended. In other (9) words, there was no intent for Bell Atlantic to (10) lose money on resale.

(11) A: Right.

(12) Q: It was intended that it would offer the (13) service at a cost equal to what it would cost to (14) provide that service at wholesale, as opposed to (15) retail.

(16) A: Right.

(17) Q: What you're saying now, though, is a (18) slightly different thing, which is that, (19) notwithstanding the 29 percent discount that (20) Massachusetts set for resale, your company can't (21) offer resale and make money on it, or has chosen (22) not to relative to other options. Which is it?

(23) A: I'm not the cost guy. But based on input (24) I've had, it's the former, that we cannot offer

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(1) resale and make money.

(2) I think the best way for me as a (3) noncost person to explain this is: The resale (4) discount is based on avoided cost. I believe (5) that's how it was done in this state. Simple (6) logic — not being a cost guy, but simple logic: (7) Their avoided costs become my real costs. So if (8) they no longer have the marketing costs, I have the (9) marketing costs; they no longer have the billing (10) costs, I have the billing costs. But this is a (11) volume business. They have the volumes; I don't (12) have the volumes. So the approximate per-unit cost (13) for me is significantly more than the per-unit cost (14) for them to do the marketing and the billing and (15) the customer care, and all the things that they (16) avoided I now have to do.

(17) AT&T's experience in doing resale — (18) and don't quote me — in six to ten states, and I (19) could get you a list of which they are, is that (20) we've lost money in every case. Finally our (21) chairman came in and said, "Stop. That's enough. (22) We're not going to do this any more."

(23) Q: Let's contrast that with the UNE platform (24) and explain why that's worth doing.

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(1) A: With the UNE platform AT&T becomes the (2) full-service provider for that end user. There's (3) additional revenue opportunities. I guess the (4) bottom line —

(5) Q: Stop right there. Before you go to the (6) additional revenue opportunities, can we compare (7) the things that are the same between the UNE- (8) platform type of service and the resale type of (9)

service? For example, your marketing costs are the (10) same, more or less, right?

(11) A: I would guess, yes.

(12) Q: I'm talking orders of magnitude here. I (13) understand there would be differences. There was a (14) term you used before, let's call it customer care (15) and feeding. That presumably would be the same; (16) correct?

(17) A: Yes.

(18) Q: So what changes?

(19) A: Actually, if I may, while we're on those (20) lines: I would even say with the UNE platform our (21) costs are somewhat greater upfront, because along (22) with those things we now have the obligation of (23) billing access, so we have to have the back-office (24) systems and develop the relationships with the

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(1) other DXCs, so that we can render them access bills (2) and collect those access —

(3) So there are some other, additional (4) costs that we have with the UNE platforms that we (5) don't have with resale, your interconnection (6) agreements that we have to have with UNE platforms (7) that we don't have with resale.

(8) What's different is the opportunity (9) for additional revenues. First of all, access: (10) Instead of paying Bell Atlantic access, if it's an (11) AT&T local to AT&T long-distance, AT&T local (12) effectively pays AT&T long distance access. It (13) goes from the right pocket to the left pocket. If (14) it's access using MCI or Sprint or some other — if (15) our customer is receiving a call from MCI or Sprint (16) or picks MCI or Sprint as their long-distance (17) carrier, we get to bill them access, and there are (18) additional revenue opportunities.

(19) The subscriber-line charge that's (20) billed to the end user each month: In resale we (21) collect that from our end user and turn around and (22) give that money to Bell Atlantic. When we're (23) buying the unbundled-element platform, because we (24) bought the components of Bell Atlantic's network,

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(1) we're entitled, according to the law, to keep that (2) money. So that's additional revenue opportunity.

(3) Features: Because these features are (4) dirt cheap, and when we buy the unbundled switch (5) they're in there — it's kind of like Prego's (6) tomato sauce: It's all in there. We bought the (7) unbundled switch. We're paying for it whether we (8) use it or not. We now could package those (9) features. We could do different things with those (10) features. Maybe we charge our cus-

toners the same (11) thing Bell Atlantic charges. I don't think that's (12) what competition is all about, but maybe we try to (13) get the same \$4 for call-waiting that Bell Atlantic (14) is getting and then AT&T will have customers like (15) me who are not going to take it.

(16) Q: Why couldn't you have done that under (17) resale?

(18) A: Let's use my \$4 call-waiting. Under (19) resale, I'm paying \$3.20, so there's some room. (20) But in UNE, with the unbundled-element platform, (21) I'm paying nothing. I bought the unbundled (22) switch. I'm paying nothing. It's in there, in the (23) price. So now I have \$4 of margin to play with, as (24) opposed to 80 cents of margin to play with, to

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(1) offer my customer something.

(2) That's basically it: There's (3) additional revenue opportunities that Bell Atlantic (4) has. It puts us on an equal playing field with (5) Bell Atlantic. There's extra revenue opportunities (6) that we have with the platform that we don't have (7) with resale.

(8) Q: But you also mentioned that it puts you (9) at risk to the usage of the customer because you're (10) paying on a per-minute basis for the customer's (11) usage.

(12) A: If we have a customer who has teenagers (13) at home, making and receiving a great deal of phone (14) calls, it may cost us more to provide local service (15) to that customer than if we used resale to that (16) customer, yet we still have additional revenue (17) opportunities with that customer, and that's a risk (18) that AT&T is willing to take.

(19) EXAMINATION

(20) BY COMMISSIONER VASINGTON:

(21) Q: A couple of questions. If the margins (22) are going to stay the same whether you keep the (23) customer on a UNE basis or whether the customer (24) stays with Bell Atlantic, what's the point, then,

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(1) of having local competition?

(2) A: I didn't say that at all. If I did, I (3) didn't mean to say that. That was not how I meant (4) to characterize it. Let's use a feature, call- (5) waiting, \$4 margin today. It costs \$4, give or (6) take a penny, the margin on that is probably \$3.95, (7) pure profit to Bell Atlantic. Their quarterly (8) reports — I'm diverting for a second. If you read (9) their quarterly reports, they'll say in their (10) quarterly reports that the reason their profits are (11) doing so good this quarter is because of second (12) lines and more acceptance

of features. High (13) margin.

(14) Now AT&T gets in the market. All of (15) a sudden we're trying to compete with Bell (16) Atlantic. MCI is in the market. Others are in the (17) market. We have to differentiate our service. (18) What's the easiest, best, quickest way to (19) differentiate our service is price.

(20) With resale, there's not a lot of (21) opportunity to differentiate with price because (22) there's not a lot to play with. There's not a lot (23) of room there. With UNEs I have \$4 to play with. (24) All of a sudden for that same \$4 I might say to my

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(1) customers, "Hey, along with call-waiting, we're (2) going to throw in three-way calling and something (3) else." Or, instead of doing that, we might just (4) lower the price to something. The opportunity is (5) there to do it with the platform. The opportunity (6) is not there to do that with resale.

(7) Q: Those margins that are currently in their (8) retail rates, those were approved by regulators, (9) generally speaking. Would that be correct?

(10) A: I'm over my head, but I'll say okay. I (11) don't know. I assume so.

(12) Q: So you're not familiar with rate-making (13) principles that would have gone into a decision to (14) approve those kinds of very large profit margins (15) that you described, like for call-waiting.

(16) A: At risk of offending Mr. Levy, when it (17) gets to the economics and the ratemaking stuff, you (18) know, I stay out of those waters.

(19) Q: Thank you.

(20) MR. LEVY: You can never offend an (21) economist. There's nothing that you can say that (22) we haven't heard before.

(23) EXAMINATION

(24) BY MR. LEVY:

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(1) Q: On your recent-change proposal: As you (2) describe it, I think I can understand how it might (3) be applied to existing links. Could you tell me (4) how it could be applied, if it could be applied, to (5) new links?

(6) A: Sure. I'm glad you asked that. First, (7) you need to have the concept of two things need to (8) happen to make the service work. The physical work (9) needs to be done. So on a new link, on this (10) diagram here, the line that looks like the railroad (11) track, making the connection of the loop to the (12) switch port, that's not there. So somebody has to (13) physically make that connection.

(14) Q: Let's make it clear which figure you're (15) referring to.

(16) A: I'm looking at Figure 1, and it's

how (17) Bell Atlantic is basically networked today. And on (18) a new line, a second line, for example, Mr. Levy, (19) if you called up Bell Atlantic and said I'd like a (20) second line in my house, chances are that (21) connection is not made today. So somebody has to (22) make that connection.

(23) Regardless of who makes the (24) connection —

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(1) Q: To the MDF?

(2) A: Well, on the MDF. It has to put the (3) railroad track line in there connecting the loop to (4) a new switch port, to a switch port.

(5) Q: Let's start further downstream, at the (6) customer. Let's assume there is loop capacity in (7) the local-distribution network, but we're talking (8) about a total new service to a new customer. A new (9) house is built next to my house on the street. (10) Let's go through the steps now as you would see (11) them occurring under your recent-change proposal.

(12) A: There would need to be what I'll classify (13) as outside-plant work that needs to be done. (14) Somebody needs to roll up to this newly constructed (15) house. And let's work under the assumption that (16) there are some spare facilities in the street, or (17) else this could get real ugly. But let's work (18) under that assumption.

(19) A Bell Atlantic technician would (20) connect one of those spare facilities to the (21) customer's network-interface device. They may or (22) may not, if the customer hired Bell Atlantic, do (23) the inside wiring. Bell Atlantic may also have to (24) go to some distribution interface to connect that

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(1) customer's loop to some transport to get it to the (2) central office. But I'll classify that as all (3) outside-plant work that needs to be done.

(4) The inside-plant work that needs to (5) be done is, the engineering of that loop would tell (6) some inside-plant technician, a frame person, where (7) that loop appeared on the MDF.

(8) Q: So what you're saying is, that connection (9) is already made.

(10) A: The loop connection to the MDF, what's (11) denoted by this black line, the heavy black line (12) coming in, and the cable coming into the cable (13) vault — that loop, that spare loop that was in the (14) ground, has an appearance on their frame.

(15) Q: When you say it has an appearance —

(16) A: The connection is made on the

frame.

(17) Q: Thank you. In other words, has the (18) connection been made to the frame even before (19) there's a customer identified for that loop?

(20) A: Mr. Albert is shaking his head no. Let (21) me go with what I know, and then maybe we can hear (22) from Mr. Albert later.

(23) Facilities come into cable vaults. (24) This only shows one customer, but that one

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(1) customer's line is connected to all the other (2) neighbors. You had spare loop facilities. Those (3) spare loop facilities come into a cable vault and (4) are connected on the MDF on one side of this (5) block. That cable and all the pair numbers are (6) listed on that block. So it's Cable No. 100, Pair (7) 1, Pair 2, Pair 3.

(8) Q: Even the spares are connected?

(9) A: In my experience, spares are connected. (10) We can hear from Mr. Albert later. But in my (11) experience, spares are connected.

(12) Then a technician would have to, when (13) that spare was assigned, the technician would have (14) to run this railroad-track connection, or what we (15) call cross-connection, over across the MDF frame to (16) the switch port that was assigned to that new (17) customer.

(18) Q: So your recent-change approach does not (19) eliminate the need for someone to make that (20) cross-connection.

(21) A: Absolutely not.

(22) Q: On a new customer.

(23) A: On a new customer — that's where I was (24) going with this. For service to work for that new

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(1) customer, two things have to happen: Physical work (2) needs to be done, both outside plant, inside (3) plant. Anticipating Mr. Albert's testimony — he (4) shook his head no — even if that spare pair is not (5) connected, physical work needs to be done to (6) connect that spare pair on the frame so that this (7) railroad-track kind of connection could be made. (8) The bottom line is, physical work needs to be (9) done.

(10) Let's assume it's done and all that (11) physical work is done for your second line. It (12) still doesn't work, because some software work (13) needs to be done in the switch to make the (14) functionality of that loop work with the (15) functionality of that switch.

(16) So under AT&T's proposal to combine (17) the elements with recent change, what we're (18) suggesting is, if you

came to AT&T and said you (19) wanted that service or you wanted that second line, (20) we would pay Bell Atlantic the cost-based (21) appropriate rate — we're not looking for a free (22) ride here. We would pay them to make these (23) physical connections. On the due date the service (24) still doesn't work. The functionality to that loop

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(1) doesn't work until somebody tells the brains of the (2) switch, "Mr. Levy has this second line on this (3) switch port." On the due date, AT&T would go into (4) the recent-change process and do that software work (5) to make the functionality of the of the loop work (6) with the functionality switch, effectively (7) combining the elements in the software.

(8) Q: Just to be clear, under your proposal, (9) the physical connection between the loop side of (10) the MDF and the switch side of the MDF would not be (11) defined as a combination. In your proposal the (12) combination would be defined as the moment the (13) switch through an electronic instruction turned on (14) that line. Is that correct?

(15) A: Making that combination would be done (16) through turning on that line in the switch. So I (17) should have answered that yes, and then made the (18) clarifying point.

(19) MR. LEVY: I know I've asked a few (20) more questions. Do you have any follow-up?

(21) MR. BEAUSEJOUR: I have a couple of (22) questions by way of follow-up.

(23) CROSS-EXAMINATION

(24) BY MR. BEAUSEJOUR:

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(1) Q: Referring to your Figure 1, Figure 1 from (2) AT&T Exhibit No. 2: Where on this figure does the (3) unbundled loop terminate? Just an unbundled loop.

(4) A: If I were buying nothing but an unbundled (5) loop?

(6) Q: Correct.

(7) A: It would be on the line side of the MDF, (8) what's represented here as the line side of the (9) MDF.

(10) Q: And if AT&T were buying just an (11) individual switch port, where on this diagram would (12) that individual switch port terminate?

(13) A: The switch ports appear on the MDF on (14) what's labeled here as the switch side, or commonly (15) known as the horizontal side in the central office (16) of the MDF.

(17) Q: Now, is that based upon your (18) understanding of where they terminate, or is that (19) based upon FCC definition, if you know?

(20) A: It's certainly my understanding. I'd (21) have to read the FCC order again. I'm sorry.

(22) Q: You indicate that AT&T doesn't intend to (23) enter the local market in Massachusetts by resale; (24) correct?

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(1) A: I am not the business guy here. All I'm (2) representing is what I've heard my chairman say, (3) and my chairman said, "We're not going to do any (4) more resale." So when he says "any more," I have (5) to think that this applies to this state as well as (6) the other 49.

(7) Q: Maybe a bit of an unfair question for (8) you, given that answer, but what interest would (9) AT&T then have in the level of the resale discount (10) that's being established in this proceeding?

(11) MR. JONES: Well, I will object to (12) the unfairness of that question.

(13) MR. LEVY: I think that is a little (14) unfair.

(15) MR. BEAUSEJOUR: It is a good (16) question, however.

(17) MR. LEVY: I had a feeling that (18) question would come up sometime in the next two or (19) three months, but I don't think he needs to answer (20) that.

(21) MR. BEAUSEJOUR: I have nothing (22) further.

(23) MR. LEVY: Any redirect?

(24) MR. JONES: Could I take a few

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(1) minutes?

(2) MR. LEVY: Of course.

(3) (Recess taken.)

(4) MR. LEVY: Back on the record.

(5) REDIRECT EXAMINATION

(6) BY MR. JONES:

(7) Q: Mr. Falcone, Mr. Levy asked you about the (8) physical-plant work that's required to provide (9) service under the recent-change scenario to his new (10) next-door neighbor who is just moving into a new- (11) construction house and doing the physical work to (12) connect that house back to the central office. Do (13) you recall that?

(14) A: Yes.

(15) Q: Is that physical-plant work that you (16) described, the outside-plant work, and the central- (17) office work that you described assuming the spare (18) line hasn't already been connected at the central (19) office — does that change if you move from the (20) recent-change approach to a UNE-platform approach?

(21) A: No, it does not. The same amount of work (22) would have to be done.

(23) Q: Does it change if you move from a (24) recent-change or a UNE-platform to a

resale

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[1] scenario?

[2] A: No. Again, simple logic: The physical [3] work needs to be done no matter which flavor or [4] variety of ways you serve that customer. The same [5] work needs to get done.

[6] Q: And we're back to an already-dead horse [7] being beaten; but does it change if you move from a [8] recent-change and a UNE-platform and a resale [9] scenario to the Bell Atlantic collocation [10] scenario?

[11] A: No. Again, up to that point on the [12] frame, all that manual, physical work needs to be [13] done. All the Bell Atlantic collocation scenario [14] is, it adds this much more manual work that needs [15] to be done.

[16] MR. LEVY: "This much more"?

[17] THE WITNESS: For the purpose of the [18] record, showing what's in Figure 5.

[19] Q: Mr. Falcone, back to your Prego tomato [20] sauce, where you describe the costs for the [21] vertical features of a switch being zero because [22] when you buy the switch you get those [23] functionalities. Do you recall that?

[24] A: I recall saying that.

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[1] Q: Are you aware that in calculating the UNE [2] switch costs in prior phases of this proceeding [3] that some cost for vertical features was calculated [4] and included in the switch costs?

[5] A: Yes, I'm aware of that. And I didn't [6] mean to imply, if it came out that way, that we [7] were getting those features for free. I guess my [8] point was that if the cost was truly cost-based, [9] those features are so cheap for Bell Atlantic that [10] that component of the features in the switch costs [11] would be so small that it's all in there.

[12] Q: And is it your understanding under the [13] UNE costs as calculated that when you buy the [14] switch UNE you are for that one price getting the [15] switch functionalities, including the vertical [16] features functionalities?

[17] A: Yes, sir.

[18] Q: And finally, just to ask you a general [19] question: From AT&T's point of view, is [20] collocation always a bad thing?

[21] A: No, absolutely not. There are times when [22] collocation is a necessary evil. If I have my own [23] switch, which is not physically in the same spot as [24] where the loops terminate — it might be two miles

[1] down the road — and yet I need access to the Bell [2] Atlantic loops, I'm going to need to collocate some [3] kind of facilities, whether they be transport [4] facilities or remote switching facilities, to [5] access those loops and deliver them to my switch. [6] In those cases collocation is a necessary evil.

[7] In the case when the loops and the [8] switch that I want to purchase — again, looking at [9] Figure 1 — are in the same building, in the same [10] location, it doesn't make sense to have to [11] collocate to combine the two.

[12] MR. JONES: I have nothing further.

[13] MR. LEVY: Thank you. Thank you very [14] much for coming, Mr. Falcone.

[15] THE WITNESS: Thank you, Mr. Levy.

[16] MR. LEVY: Ms. Barbulescu, your [17] witness.

[18] MR. LEVY: Why don't you give your [19] name and position for the record.

[20] THE WITNESS: My name is Annette S. [21] Guariglia. I'm a regulatory analyst for public [22] policy, local competition group.

[23] ANNETTE S. GUARIGLIA, Previously Sworn [24] DIRECT EXAMINATION

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[1] BY MS. BARBULESCU:

[2] Q: Ms. Guariglia, do you have copies of your [3] direct and supplemental testimony that was [4] submitted in Massachusetts in this case?

[5] A: Yes.

[6] Q: And were these documents which were [7] submitted April 28th and April 17th prepared by you [8] or under your direct supervision and control?

[9] A: Yes, they were.

[10] Q: And do you have any changes or [11] corrections to make to these documents?

[12] A: No, I do not.

[13] Q: And do you adopt these documents as part [14] of your sworn testimony in this case?

[15] A: Yes.

[16] MS. BARBULESCU: Arbitrator Levy, Ms. [17] Guariglia has an opening statement that she would [18] like to make today, with your permission.

[19] MR. LEVY: Fine. Let's first mark [20] her direct testimony as MCI Combinations 1 and her [21] supplemental as MCI Combinations 2.

[22] (Exhibits MCI Combinations 1 and MCI [23] Combinations 2 marked for identification.)

[24] MR. LEVY: I'd be happy to hear the

[1] opening statement.

[2] A: The purpose of my opening statement is to [3] rebut comments made by Ms. Paula Brown and Ms. Amy [4] Stern on May 1st, '98, with regard to Bell [5] Atlantic's combination proposals and my testimony. [6] Ms. Brown and Ms. Stern claim that UNE platform is [7] a substitute for the resale of Bell Atlantic - [8] Massachusetts's retail service. Contrary to these [9] claims, it is incorrect to state that service [10] offerings via UNEs and resale are equal. As stated [11] in my testimony, resale is a service-based [12] approach, while UNEs is a facilities-based [13] approach. CLECs such as MCI are going to make a [14] strategic choice between these two modes of [15] providing service based on their overall objective [16] as a company. MCI has made it very clear that it [17] wants to be a facilities-based provider of local [18] service, not a reseller of Bell Atlantic's retail [19] local-service offering.

[20] Resale, contrary to Ms. Stern's [21] claims, does not offer MCI the pricing flexibility [22] and product differentiation necessary for it to [23] compete on a broad scale, because it causes MCI to [24] be dependent on Bell Atlantic's retail structure.

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[1] The effective use of UNEs is [2] essential in encouraging facilities-based [3] competition in the State of Massachusetts. The [4] leasing of UNEs, because it is a facilities-based [5] approach, gives CLECs some measure of control over [6] the use of its open network facilities. [7] Furthermore, Ms. Stern misinterpreted my testimony [8] by stating that I implied that, quote, "resale is [9] more complex and restrictive operationally than [10] UNEs," unquote. In fact, my testimony states the [11] opposite: Purchasing UNE combinations is more [12] complex than resale because with the use of UNEs [13] comes all the obligations and accountability [14] associated with being a facilities-based provider [15] of service.

[16] MCI is willing to take on these [17] additional obligations because in return MCI will [18] gain more control over its network and its service [19] offerings, which allows MCI to differentiate itself [20] in the market.

[21] Building a facilities-based network, [22] however, is time-consuming and costly. MCI, [23] because it does not have the ubiquitous facilities [24] network enjoyed by Bell Atlantic today, needs to

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[1] lease unbundled network elements until such time as [2] it can ultimately replace those elements with its [3] own

facilities.

(4) With regard to Bell Atlantic's (5) various proposals for UNE combinations: Ms. Brown (6) claims that these proposals are, quote, "are (7) substantial and promote competition," unquote. (8) Unfortunately, this could not be further from the (9) truth. It is undisputed that BA would offer UNE (10) combinations if it so wished. BA instead, however, (11) has proposed several proposals, all of which (12) require some form of physical collocation, require (13) multiple connections that increase costs, and (14) create additional points of potential failures. (15) Such proposals can hardly be described as efficient (16) or as promoting competition.

(17) Bell Atlantic's extended link (18) proposal requires CLECs to incur additional (19) transport charges and does not offer the benefits (20) of traffic concentration. This proposal is not (21) consistent with current ILEC forward-looking (22) network design because it does not provide an (23) efficient loop-transport combination for voice (24) analog loops and DSO transport combination. It is

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(1) inefficient to dedicate a DSO circuit of (2) interoffice transport to each and every voice-grade (3) analog loop.

(4) CLECs need the efficiencies (5) associated with digital-loop carrier equipment; (6) with GR-303 capability, along with interoffice (7) transport at the DS1 level, to access voice-grade (8) analog loops. This is because most subscribers of (9) voice-grade analog lines use their service (10) intermittently, thus making it inefficient to (11) dedicate transport to a single loop which will be (12) idle much of the time.

(13) Furthermore, this proposal is only (14) available for three years. If a CLEC opted to use (15) this option, it would have to collocate in every (16) end office at the end of those three years or have (17) a ubiquitous facilities-based network, which would (18) be impossible for any carrier to replicate in that (19) time frame.

(20) The switch-subplatform proposal does (21) not offer CLECs the ability to combine loop and (22) port without physical collocation. This proposal (23) only offers CLECs the ability to combine switching (24) and transport on the trunk side of the switch.

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(1) The virtual-collocation proposal, (2) BA's virtual-collocation proposal, as testified by (3) Mr. Kennedy, would allow a CLEC to virtually (4) perform cross-connections. But from his testimony, it (5) is apparent that the equipment is costly, has not (6) been tested extensively for the

purpose of remotely (7) assembling UNE combinations, and in the end (8) requires physical collocation of equipment by the (9) CLEC.

(10) Bell Atlantic has yet to provide a (11) proposal for combination of UNEs that is as (12) efficient as MCI's proposal. As I have stated in (13) my testimony, MCI is proposing that Bell Atlantic (14) combine UNEs for CLECs or keep them combined if (15) they are already combined in their network, subject (16) to the appropriate nonrecurring charges to CLECs (17) based on forward-looking efficient costs.

(18) MS. BARBULESCU: If I may, I have (19) some questions for Ms. Guariglia with respect to (20) some of the other testimony we've heard today.

(21) MR. LEVY: We might as well do it.

(22) Q: Ms. Guariglia, MCI is not only requesting (23) a total combinations or a UNE platform, but also (24) subsets of combinations; isn't that correct?

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(1) A: That's correct.

(2) Q: And one of those combinations would be a (3) loop-transport combination; is that correct?

(4) A: That's correct.

(5) Q: You heard Mr. Falcone testify on behalf (6) of AT&T today with respect to recent-change or (7) RCMAC; correct?

(8) A: Correct.

(9) Q: And RCMAC would allow access to the total (10) UNE platform or total combinations; isn't that (11) right? Or it's been testified to.

(12) A: My understanding is that RCMAC would (13) allow you to complete some software changes (14) associated with combining network elements. But (15) then again, I'm not an expert on RCMAC.

(16) Q: Would RCMAC allow MCI to get access to (17) just the loop-and-port subcombination that MCI is (18) requesting here?

(19) A: No, I've been informed that RCMAC does (20) not perform the loop-and-transport combination.

(21) Q: And this is based on your understanding, (22) is it not, that RCMAC is a switch-based (23) technology?

(24) A: That's correct.

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(1) MS. BARBULESCU: I have no additional (2) questions.

(3) MR. LEVY: I have a couple.

(4) EXAMINATION

(5) BY MR. LEVY:

(6) Q: Explain your loop-transport combination a (7) little bit more, if you would.

Explain how that (8) would be used or for what purpose that would be (9) used.

(10) A: If MCI has a switch, as it does in (11) downtown Boston, we would want to purchase the loop (12) from the end user and to transport that back to our (13) switch and then perform the switching functionality (14) at our location wherever that switch is. We don't (15) need Bell Atlantic's switching capability.

(16) Q: Was it your understanding that before the (17) policy change of Bell Atlantic, whenever that was, (18) after the Eighth Circuit, that that combination was (19) being offered to you?

(20) A: I'm not sure if it was being offered in (21) Massachusetts, but it is currently being offered in (22) New York.

(23) Q: I'm trying to get it back to pre-Eighth (24) Circuit. At that time was it being offered in

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(1) Massachusetts?

(2) A: I don't know.

(3) Q: This may be a definitional issue; it (4) probably is. But when you say that the UNE (5) platform permits facilities-based competition, I (6) don't understand why leasing the whole set of (7) facilities from Bell Atlantic is being defined by (8) you as facilities-based competition.

(9) A: First of all, I want to let you know that (10) the term "platform" is not used internally at MCI. (11) We just don't like that word at all.

(12) MR. BEAUSEJOUR: It's an AT&T word.

(13) A: Well, because it misrepresents our goal, (14) and it misrepresents what UNEs are. UNEs are (15) individual network elements.

(16) Now, in some cases we might opt to (17) purchase every element, which you refer to that as (18) platform, if that's what you refer to it as. I (19) would refer to it as total combinations. That (20) would be in places where we don't have facilities.

(21) Now, wherever we do have facilities, (22) we would only purchase the elements that we (23) currently do not have.

(24) Q: I understand. I was trying to

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(1) understand — I think the term "UNE platform" that (2) I've heard — or maybe I was just interpreting it (3) this — means, essentially the soup-to-nuts link (4) all the way through switching to transport, (5) whatever.

(6) A: Right, because you would be —

(7) Q: The total service, if you want to look at (8) it that way.

(9) A: Correct, because you're purchasing every (10) element. And you